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# C O N T E N T S.

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| 1. | 15351/A 18.9.52. | Opinions under the Mohamedan Law. The consul General that the law relating to Guardians and wards is contained in the Guardians and wards Act. | 1-3 |

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Office of the R.L.A.

The answers to the various questions raised by the Consul General for Iran in his letter at page 1 ante may be given in brief as follows:-

1. The first question is upto what age a child is regarded as a minor and when is the age of puberty reached. Under section 3 of the Indian Majority Act, 1875, minority ceases on the completion of the eighteenth year, unless a guardian of the person or property or both of the minor has been or shall be appointed before the minor has attained the age of eighteen years of the property of the minor is under the superintendence of the Court of Wards, in which case the age of minority is prolonged until the minor has completed the age of twenty-one years. Ordinarily under the Mahomedan Law any person who has attained puberty (which is presumed, in the absence of evidence, on completion of the age of fifteen years) is entitled to act in all matters affecting his or her status or his or her property. But that law has been modified by the Indian Majority Act, 1875, referred to above; and the only matters in which a Mohemedan is now entitled to act on attaining the age of fifteen years are marriage, dower and divorce (vide Mulla's Principles of Mohamedan Law, 13th Edition, pp.330 & 294).

2. The second question is what are the effects of legal actions by minors and lunatics and what are their possessory rights in property. It is not quite clear what is meant by "legal actions" in the former part of the question. But probably the Consul General wants to know whether minors and lunatics can enter into contracts etc., so as to bind them. Under section 11 of the Indian Contract Act, 1872, a person who is a minor and who is not of sound mind is not competent to enter into a contract i.e. to bind himself by promise (see Mulla's Contract Act, Seventh Edition , p.60). A person who is a minor or who is of unsound mind can no doubt possess proper

in his own name like any other person; but such a person is not competent to transfer property (vide section 7 of the Transfer of property Act,1882).

3. The third question is who is empowered to appoint guardians for minors. Section 7 of the Guardians and Wards Act,1890, empowers the District Court to appoint a guardian of the person or property or both of the minor. Section 6 ~~of the person or property or both of the minor~~. Section 6 however, saves the power of the natural guardian of a minor to appoint a guardian, if such power is valid under the personal law of the minor.

4. The fourth question is who can and who cannot become a guardian. Sub-section (2) of section 17 of the Guardians and Wards Act,1890, requires the Court in appointing a guardian of a minor to have regard to the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property. See also pp.294 -295 of Mulla's Mahomedan Law and para. 358 at p.300 thereof which states that the following persons are entitled in the order mentioned to be guardians of the property of a minor.

1) the father

2) the executor appointed by the father's will,

3) the father's father

4) the executor appointed by the will of the father's father.

5) The fifth question ~~appointed by the will of the father's father~~ is what are the legal limitations on the powers of a guardian In this connection attention is invited to sections 28 and 29 of the Guardians and Wards Act,1890. The former section provides that if a guardian has been appointed by will or section provides that if a guardian has been appointed by will or other instrument his power to mortgage or charge or transfer by sale, gift, exchange or otherwise, immovable property belonging to this ward is subject to any restriction which may have been imposed by the instrument, unless permitted by the Court Under

Under the latter section a guardian appointed by the Court cannot, without the previous permission of the Court, mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immoveable property of his ward or lease any part of the property for a term exceeding 5 years or for any term extending more than one year beyond the date on which the ward will cease to be a minor (see also articles 362 and 363 at pp. 301 and 302 of Mulla's Mahommedan Law).

6) The sixth question is whether a guardian can be dismissed, and if so, under what circumstances. The answer to this question will be found in section 39 of the Guardians and wards Act. Under that section a guardian is liable to be removed for any of the following causes:-

(a) for abuse of his trust;

(b) for continued failure to perform the duties of his trust;

(c) for incapacity to perform the duties of his trust;

(d) for ill-treatment, or neglect to take proper care, of his ward.

(e) for contumacious disregard of any provision of the Act or of any order of the Court;

(f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;

(g) for having an interest adverse to the faithful performance of his duties.

(h) for ceasing toreside within the local limits of the jurisdiction of the Court;

(i) in the case of a guardian of the property, for bankruptcy or insolvency;

(j) by reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject.

7) The last question is under what circumstances a guardian can withdraw. No particular circumstances have been specified by law. If a guardian desires toresign his office he can appl to the Court be discharged; and if the Court finds that there is sufficient reason for the application, it shall discharge him (vide Section 40 of the Guardians and Wards Act,1890).

2. The Consul-General may further be informed that for fuller discussion reference may be made to the books cited above.

Sd/ P.N.Lad.
Remembrancer of Legal Affairs.

U.O. to H.L.No.15351/A, dated the 16th Septr.1952.

EXH.20/6/